



[Billing Code 4710-25]

**DEPARTMENT OF STATE**

**22 CFR Part 126**

**RIN 1400-AD00**

**[Public Notice: 7708]**

**Amendment to the International Traffic in Arms Regulations:**

**Additional Method of Electronic Payment of Registration Fees**

**AGENCY:** Department of State.

**ACTION:** Final Rule.

**SUMMARY:** The Department of State is amending the International Traffic in Arms Regulations (ITAR) to identify the Federal Reserve Wire Network (FedWire) as another method of electronic payment of registration fees, so as to provide a choice in and facilitate the submission of fees by registrants.

**DATES:** This rule is effective [insert date of publication in the *Federal Register*].

**FOR FURTHER INFORMATION CONTACT:** Tanya A. Phillips, Office of Defense Trade Controls Compliance, U.S. Department of State, telephone (202) 632-2797, or e-mail [DDTCResponseTeam@state.gov](mailto:DDTCResponseTeam@state.gov).

ATTN: Registration – Additional Method of Electronic Payment of Registration Fees.

**SUPPLEMENTARY INFORMATION:**

The Directorate of Defense Trade Controls (DDTC) is responsible for the collection of registration fees from persons in the business of manufacturing, exporting, and/or brokering defense articles or defense services.

On February 24, 2011, the Department proposed electronic payment as the sole method of the submission of registration fees (*see* the proposed rule, “Amendment to the International Traffic in Arms Regulations: Electronic Payment of Registration Fees; 60-Day Notice of the Proposed Statement of Registration Information Collection,” 76 FR 10291). That proposal received no public comment within the established comment period. The final rule (76 FR 45195, July 28, 2011) took effect on September 26, 2011, and identified Automated Clearing House (ACH) as the means by which U.S. entities may electronically submit their registration fees.

Since the implementation of that rule, a considerable number of intended registrants have contacted the Department, inquiring if payment may be made using the Federal Reserve Wire Network (FedWire), as they were experiencing difficulties in originating ACH transactions. This rule seeks to address these concerns. Therefore, to §§ 122.2 and 129.4 of the ITAR, where registration fee payment is described, FedWire is added as an acceptable electronic payment method.

### **Regulatory Analysis and Notices**

#### *Administrative Procedure Act*

The Department of State is of the opinion that controlling the import and export of defense articles and services is a foreign affairs function of the United States Government and that rules implementing this function are exempt from section 553 (Rulemaking) and section 554 (Adjudications) of the Administrative Procedure Act. Since the Department is of the opinion

that this rule is exempt from 5 U.S.C. 553, it is the view of the Department of State that the provisions of section 553(d) do not apply to this rulemaking.

*Regulatory Flexibility Act*

Since this amendment is not subject to 5 U.S.C. 553, it does not require analysis under the Regulatory Flexibility Act.

*Unfunded Mandates Act of 1995*

This amendment does not involve a mandate that will result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

*Small Business Regulatory Enforcement Fairness Act of 1996*

This amendment has been found not to be a major rule within the meaning of the Small Business Regulatory Enforcement Fairness Act of 1996.

*Executive Orders 12372 and 13132*

This amendment will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the

distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this amendment does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this amendment.

*Executive Order 12866*

The Department is of the opinion that controlling the import and export of defense articles and services is a foreign affairs function of the United States Government and that rules governing the conduct of this function are exempt from the requirements of Executive Order 12866. However, the Department has reviewed this rule to ensure its consistency with the regulatory philosophy and principles set forth in the Executive Order.

*Executive Order 12988*

The Department of State has reviewed this amendment in light of sections 3(a) and 3(b) (2) of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

*Executive Order 13563*

The Department of State has considered this rule in light of Executive Order 13563, dated January 18, 2011, and affirms that this regulation is consistent with the guidance therein.

#### *Executive Order 13175*

The Department has determined that this rulemaking will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not pre-empt tribal law. Accordingly, the requirements of Executive Order 13175 do not apply to this rulemaking.

#### *Paperwork Reduction Act*

This rule does not impose any new reporting or recordkeeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

### **List of Subjects in 22 CFR Parts 122 and 129**

Arms and munitions, Exports.

Accordingly, for the reasons set forth above, Title 22, Chapter I, Subchapter M, parts 122 and 129 are amended as follows:

### **PART 122 – REGISTRATION OF MANUFACTURERS AND EXPORTERS**

1. The authority citation for part 122 continues to read as follows:

**Authority:** Secs. 2 and 38, Public Law 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778); E.O. 11958, 42 FR 4311; 1977 Comp. p. 79, 22 U.S.C. 2651a.

2. Section 122.2 is amended by revising paragraph (a) to read as follows:

## **§ 122.2 Submission of registration statement.**

(a) *General.* An intended registrant must submit a Department of State Form DS-2032 (Statement of Registration) to the Office of Defense Trade Controls Compliance by registered or overnight mail delivery, and must submit an electronic payment via Automated Clearing House or Federal Reserve Wire Network payable to the Department of State of one of the fees prescribed in § 122.3(a) of this subchapter. Automated Clearing House (ACH) and Federal Reserve Wire Network (FedWire) are electronic networks used to process financial transactions in the United States. Intended registrants should access the Directorate of Defense Trade Control's website at [www.pmdtdc.state.gov](http://www.pmdtdc.state.gov) for detailed guidelines on submitting an ACH or FedWire electronic payment. Electronic payments must be in U.S. currency and must be payable through a U.S. financial institution. Cash, checks, foreign currency, or money orders will not be accepted. In addition, the Statement of Registration must be signed by a senior officer (e.g., Chief Executive Officer, President, Secretary, Partner, Member, Treasurer, General Counsel) who has been empowered by the intended registrant to sign such documents. The intended registrant also shall submit documentation that demonstrates that it is incorporated or otherwise authorized to do business in the United States. The Directorate of Defense Trade Controls will notify the registrant if the Statement of Registration is incomplete either by notifying the registrant of what information is required or through the return of the entire registration package. Registrants may not establish new entities for the purpose of reducing registration fees.

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## **PART 129 – REGISTRATION AND LICENSING OF BROKERS**

3. The authority citation for part 129 continues to read as follows:

**Authority:** Sec. 38, Pub. L. 104–164, 110 Stat. 1437, (22 U.S.C. 2778).

4. Section 129.4 is amended by revising paragraph (a) to read as follows:

**§ 129.4 Registration statement and fees.**

(a) *General.* An intended registrant must submit a Department of State Form DS-2032 (Statement of Registration) to the Office of Defense Trade Controls Compliance by registered or overnight mail delivery, and must submit an electronic payment via Automated Clearing House (ACH), Federal Reserve Wire Network (FedWire), or Society for Worldwide Interbank Financial Telecommunications (SWIFT), payable to the Department of State of the fees prescribed in § 122.3(a) of this subchapter. Automated Clearing House and FedWire are electronic networks used to process financial transactions originating from within the United States and SWIFT is the messaging service used by financial institutions worldwide to issue international transfers for foreign accounts. Payment methods (i.e., ACH, FedWire, and SWIFT) are dependent on the source of the funds (U.S. or foreign bank) drawn from the applicant's account. The originating account must be the registrant's account and not a third party's account. Intended registrants should access the Directorate of Defense Trade Control's website at [www.pmdtdc.state.gov](http://www.pmdtdc.state.gov) for detailed guidelines on submitting ACH, FedWire, and SWIFT electronic payments. Payments, including from foreign brokers, must be in U.S. currency, payable through a U.S. financial institution. Cash, checks, foreign currency, or money orders will not be accepted. The Statement of Registration must be signed by a senior officer (e.g., Chief Executive Officer, President, Secretary, Partner, Member, Treasurer, General Counsel) who has been empowered by the intended registrant to sign such documents. The intended registrant, whether

a U.S. or foreign person, shall submit documentation that demonstrates it is incorporated or otherwise authorized to do business in its respective country. Foreign persons who are required to register shall provide information that is substantially similar in content to that which a U.S. person would provide under this provision (e.g., foreign business license or similar authorization to do business). The Directorate of Defense Trade Controls will notify the registrant if the Statement of Registration is incomplete either by notifying the registrant of what information is required or through the return of the entire registration package. Registrants may not establish new entities for the purpose of reducing registration fees.

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November 29, 2011  
(Date)

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